THE HON'BLE SRI JUSTICE C.Y.SOMAYAJULU

WRIT PETITION No. 8557 of 2005

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% 28.04.2005

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G. Dayakar, S/o. G. Krishna Murthy

…Petitioner

Vs.

$ 1. The District Registrar, Registration office, Ranga Reddy District and another.

...Respondents

Counsel for the Petitioner: **MR.Y. KOTESWAR RAO**
Counsel for the Respondents: **GP FOR REVENUE**

< Gist:

- Head Note:

? Cases referred:

1998 (2) AN.W.R. 331

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWENTY EIGHTH DAY OF APRIL
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE C.Y.SOMAYAJULU

WRIT PETITION NO: 8557 of 2005

Between:

G.Dayakar S/o.G.Krishna Murthy
R/o.Flat No.102, Dwaraka Maayi Apartments, Ferozguda,

Hyderabad.

... PETITIONER

AND

1 The District Registrar, Registration office
Ranga Reddy District H.No.5-203/1, Bhavani Nagar,
Moosapet, Hyderabad.
2 The Sub Registrar, Sub Registration Office, Kukatpally, Hyderabad.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly one in the nature of writ of Mandamus or any appropriate writ, declaring the action of the respondents in issuing the notice No.5418/1A/04 dt.22.12.2004, as illegal, arbitrary and violative of Principles of Natural Justice and set aside the same, consequently direct the respondents not to take any action against the petitioner in the interest of justice.

Counsel for the Petitioner: MR.Y.KOTESWAR RAO
Counsel for Respondents: GP FOR REVENUE

The Court made the following:

ORDER:

The case of the petitioner is that he purchased a semi-finished flat bearing No.102, Dwaraka Maayi Apartments, on Plot No.16, 23/A, in Sy. No. 8, Ferozguda, Hyderabad under a registered sale deed
No. 299/01 dated 22-01-2001 from the owner and the developer and since there was a typographical error while mentioning the number of the flat, in the registered sale deed, Flat No. 202 was typed instead of Flat No. 102, the owner and developer executed a Rectification Deed and got it registered on 08-06-2001, and that he was surprised to receive Notice No. 5418/1A/2004 dated 22-12-2004 from the first respondent calling upon him to pay deficit stamp duty of Rs. 30,420/-, on or before 05-01-2005, as per the provisions of the Indian Stamp Act, 1899
(for short 'the Act').

(2) The contention of the learned counsel for the petitioner is that since the deed is only a Rectification Deed, it is not required to be stamped as a sale deed and contends that in any event, since the notice dated 22-12-2004, issued by the first

respondent, impugned in this petition, is issued under Section 41-A of the Act, petitioner is entitled to a show cause notice before any order is passed against him and since no such show cause notice is given, the impugned order is liable to be set aside.

Section 41-A of the Act reads as under:

> " **41-A Recovery of Stamp Duty not levied or short levied: -**
>
> (1) Whereafter the commencement of the Indian Stamp (Andhra Pradesh Amendment) Act, 1986, any instrument chargeable with duty has not been duly stamped and registered by any Registering Officer by mistake and remarked as such by the Collector or any audit party, the Collector may, within five years from the date of registration serve a notice on the person by whom the duty was payable requiring him to show cause why [the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.]
>
> Provided that where the non-payment was by reason of fraud, collusion or any willful mis-statement or suppression of facts or contravention of any of the provisions of this Act or the rules made thereunder with intent to evade payment of duty, the Collector may within ten years from the date of registration serve a notice on such person to show cause why [the amount required to make up the deficit stamp duty should not be collected from him along with a penalty of three times of the deficit stamp duty.]
>
> (2) The Collector or any officer specially authorised by him in this behalf shall, after considering the representation if any, made by the person on whom notice is served under sub-section (1), determine by an order, [the amount of duty and the penalty] due from such person (not being in excess of the amount specified in the notice) and thereupon such person shall pay the amount as determined. On payment of the [amount] the Collector shall add a certificate under Sec.42.
>
> (3) Any person aggrieved by an order under sub-section (2) may prefer an appeal before the [Chief Controlling Revenue Authority] Andhra Pradesh, Hyderabad within three months from the date of such order.
>
> (4) Any [amount] payable under this section shall be recovered as an arrear of land revenue].

(3) As per the notification dated 02-07-1987, issued by Commissioner of Survey Settlements and Land Records, A.P., District Registrar, Audit District Registrars and Assistant District Registrars have been appointed as Collectors to exercise powers under Section 41-A of the Indian Stamp (Andhra Pradesh) Amendment Act, 1986. Hence, the jurisdiction of the first respondent to issue the impugned notice cannot be doubted.

But, since the said section mandates a show cause notice being issued prior to the passing of any order, first respondent was in error in not issuing a show cause notice to the petitioner before passing the impugned order. For that reason alone, the

impugned notice is liable to be set aside. In fact, in **Kotha Kota Ramprasad and ors. Vs. The District Registrar, Srikakulam** , a similar notice was set aside and a direction was given to dispose of the case according to the procedure prescribed under Section 41 of the Act.

(4) In the circumstances, the order impugned is set aside. First respondent shall issue a show cause notice to the petitioner under Section 41-A of the Act and consider the representation of the petitioner on the show cause notice and pass appropriate orders, in accordance with law.

(5) Accordingly, the writ petition is allowed. No costs.

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C.Y. SOMAYAJULU, J

April 28, 2005

Note: *L.R. Copy to be marked*

(B/o)

MRR

ASSISTANT REGISTRAR

// TRUE COPY //

SECTION OFFICER

Copy to. –

One fair copy to the Hon'ble Mr Justice C.Y.Somayajulu (For his lordships kind perusal)

1 *The District Registrar, Registration office*
Ranga Reddy District H.No.5-203/1, Bhavani Nagar,
Moosapet, Hyderabad.

2 The Sub Registrar, Sub Registration Office, Kukatpally, Hyderabad.

3 Two C.C. s to the G.P. for Revenue, High Court of A.P., Hyderabad (OUT)

4 8 L.R. COPIES.

5 The Under Secretary, Union of India, Ministry of Law, Justice & Company Affairs, New Delhi.

6 The Secretary, A.P. Advocates Association, Library, High Court Buildings, Hyderabad.

7 Two C.D. Copies.

*Form-NIC-OGS/WP {**MPL**}*